

**Before the  
Federal Communications Commission**

In the matter of	)	
	)	
Request for Review by	)	
	)	
Shawano-Gresham School District	)	File No. SLD-292913
Shawano, Wisconsin	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: February 5, 2004**

**Released: February 6, 2004**

By the: Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has before it a request by the Shawano-Gresham School District (Shawano-Gresham), Shawano, Wisconsin, to review a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC, or Administrator) to deny a funding request made by Shawano-Gresham pursuant to the universal service schools and libraries support mechanism (E-rate).<sup>1</sup> For the reasons set forth below, we grant the request.

2. As part of Shawano-Gresham's Funding Year 2002 FCC Form 471 application, Shawano-Gresham submitted Funding Request Number (FRN) 756101 for Internet access, one of the three categories of eligible services under the E-rate program.<sup>2</sup> In support of the FRN, Shawano-Gresham attached an invoice for \$1142 from the Shawano Municipal Utilities (SMU Invoice No. 1). The invoice stated the charges were for "Electric Charges," and under "Type of Service" stated "Elec." Elsewhere on the invoice, under "Name and Service Address," the invoice stated "Shawano Gresham School" and the words "Fiber Optics."

3. SLD denied the FRN on the grounds that "electric charges" are an ineligible service and here they constituted more than the 30% of the charges in the FRN.<sup>3</sup> Shawano-Gresham appealed the initial decision to SLD, stating that SMU Invoice No. 1 was really for "fiber optic" transmission, an eligible service, as evidenced by the words on SMU Invoice No. 1. Shawano-Gresham also attached a second invoice from Shawano Municipal Utilities (SMU

<sup>1</sup> Letter from Steve Miller, Shawano-Gresham School District, to the Federal Communications Commission, filed October 30, 2002 (Request for Review); 47 C.F.R. § 54.719(c).

<sup>2</sup> For the list of eligible services, see SLD Website at <http://www.sl.universalservice.org/reference/eligible.asp>. See also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202, 9207 (2003) (*Second Report and Order*).

<sup>3</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Steve Miller, Shawano-Gresham School District, May 7, 2002.

Invoice No. 2), an earlier invoice for \$1142, that clearly itemizes the charge as fiber optic transmission services.<sup>4</sup> SLD denied Shawano-Gresham's appeal on the grounds that "[d]uring the appeals process we are unable to accept new information except under limited circumstances."<sup>5</sup> SLD also stated: "[t]his funding request was correctly denied based on the original support documentation you have included with the Form 471." Shawano-Gresham then filed the instant Request for Review.

5. We find that SLD should have considered the new information submitted by Shawano-Gresham on appeal. We also find that the new information supports Shawano-Gresham's claim that the FRN was for an eligible service. Pursuant to USAC appeal guidelines, new information may not be admitted on appeal to contradict earlier information, but it can be admitted to clarify an ambiguity in earlier information.<sup>6</sup> Here, the first invoice, SMU Invoice No. 1, was ambiguous on its face because it contained the words "Fiber Optics," which were at odds with the service line statement of "Electric Charges." The new information supports Shawano-Gresham's claim that the instant invoice is, in fact, for fiber optics transmission, an eligible service.

6. SMU Invoice No. 2 also is admissible pursuant to SLD's own Appeal Guidelines, which state that when "...funding is denied based on an incorrect assumption, the SLD will grant appeal when the appellant points out the incorrect assumption and provides documentation about the issue that is consistent with information originally provided but also successfully resolves the ambiguity in the original file."<sup>7</sup> Here, some of the language on the face of SMU Invoice No. 1 led SLD to the erroneous assumption that Shawano-Gresham had submitted an invoice for electrical utility charges. The new information offered on appeal, in SMU Invoice No. 2, provided SLD the opportunity to correct this assumption.

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<sup>4</sup> Letter from Steve Miller, Shawano-Gresham School District, to Schools and Libraries Division, Universal Service Administrative Company, dated May 13, 2002. See *Second Report and Order*, para. 38.

<sup>5</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Steve Miller, Shawano-Gresham School District, dated October 17, 2002.

<sup>6</sup> *Request for Review by Pope Branch Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200168, CC Docket Nos. 95-46 and 97-21, Order, 16 FCC Rcd 20205, 20207 (Com. Car. Bur. 2001).

<sup>7</sup> See SLD website Appeal Guidelines at <http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>; see also *Request for Review by Carrollton-Farmers Branch Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD 229384, CC Docket Nos. 95-46 and 97-21, Order, 17 FCC Rcd 16067, 16070 (Wireline Comp. Bur. 2002).

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Shawano-Gresham School District, Shawano, Wisconsin, on October 3, 2002, IS GRANTED, and the application is REMANDED to SLD for further consideration consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau